

1 JAMES M. PEARL (SB# 198481)  
jamespearl@paulhastings.com  
2 KIAURA CLARK (SB# 336314)  
kiauraclark@paulhastings.com  
3 **PAUL HASTINGS LLP**  
4 1999 Avenue of The Stars, 27th Floor  
Los Angeles, California 90067  
5 Telephone: 1(310) 620-5700  
Facsimile: 1(310) 620-5899

6 ADAM M. REICH (SB# 274235)  
adamreich@paulhastings.com  
7 EMMA LANZON (*pro hac vice*)  
emmalanzon@paulhastings.com  
8 **PAUL HASTINGS LLP**  
71 South Wacker Drive, 45th Floor  
9 Chicago, Illinois 60606  
10 Telephone: 1(312) 499-6000  
Facsimile: 1(312) 499-6100

11      *[Additional Counsel for Defendant  
continued on next page]*

12                   *Attorneys for Defendant,*  
13                   *Redwood Capital Management, LLC*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

16 | K.A..

17 Plaintiff,

18 || VS.

19 MINDGEEK S.A.R.L. a foreign entity;  
20 MG FREESITES, LTD., a foreign entity;  
21 MINDGEEK USA INCORPORATED, a  
22 Delaware corporation; MG PREMIUM  
23 LTD, a foreign entity; MG GLOBAL  
24 ENTERTAINMENT INC., a Delaware  
25 corporation; 9219-1568 QUEBEC, INC., a  
26 foreign entity; BERND BERGMAIR, a  
foreign individual; FERAS ANTOON, a  
foreign individual; DAVID TASSILLO, a  
foreign individual; VISA INC., a Delaware  
corporation; REDWOOD CAPITAL  
MANAGEMENT, LLC, a Delaware  
limited liability company; REDWOOD  
DOE FUNDS 1-7; COIBECK CAPITAL

CASE NO. 2:24-cv-04786-WLH-  
ADS

**DECLARATION OF ADAM M.  
REICH IN SUPPORT OF  
LOCAL CIVIL RULE 79-5.2.2  
APPLICATION FOR LEAVE TO  
FILE UNDER SEAL MATERIAL  
DESIGNATED BY ANOTHER  
PARTY AS CONFIDENTIAL  
PURSUANT TO PROTECTIVE  
ORDER [DKT. 95]**

Date: January 31, 2024  
Time: 1:30 p.m.  
Place: Courtroom 9B  
Judge: Hon. Wesley L. Hsu

Complaint filed: June 7, 2024

1 MANAGEMENT, LLC, a Delaware  
2 company, COLBECK DOE FUNDS 1-3,  
3

Defendants.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 [Additional Counsel for Defendant continued from caption page]

2 KRISTOPHER M. HANSEN (*pro hac vice*)

3 krishansen@paulhastings.com

4 **PAUL HASTINGS LLP**

5 200 Park Avenue

6 New York, New York 10166

7 Telephone: 1(212) 318-6000

8 Facsimile: 1(212) 752-3310

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 I, Adam M. Reich, declare as follows:

2 1. I am an attorney with the law firm of Paul Hastings LLP, counsel of  
3 record for Defendant Redwood Capital Management, LLC (“Defendant” or  
4 “Redwood”). I am duly admitted to practice law before all the courts of the State of  
5 California and this Court. I have personal knowledge of the matters discussed below  
6 and if called upon to do so, I could and would competently testify thereto.

7 2. Pursuant to Civil Local Rule 79-5.2.2, I make this declaration in support  
8 of Plaintiffs A.K., W.P., L.S., W.L., C.S., S.O., J.C., K.A., N.L., T.C., X.N., N.Y.,  
9 L.T., and J.L.’s (collectively, the “Plaintiffs”) Application for Leave to File Under  
10 Seal Materials Related to Omnibus Opposition (the “Opposition Application”), Dkt.  
11 95. In their Application, Plaintiffs seek to seal certain material designated as  
12 “Confidential” by MindGeek, S.à r.l (specially appearing), MG Freesites Ltd, MG  
13 Premium Ltd, MindGeek USA Incorporated, MG Global Entertainment Inc., and  
14 9219-1568 Quebec Inc. (collectively, the “MindGeek Defendants”) and Defendant  
15 Bernd Bergmair (“Bergmair”) under the Amended Protective Order filed in *Fleites*  
16 v. *MindGeek S.a.r.l. et al.*, Case No. 21-cv-04920-WLH-ADS (Dkt. 490) (the  
17 “*Fleites Case*”) and filed in support of Plaintiffs’ Omnibus Opposition to Defendants’  
18 Motions to Dismiss (Dkt. 96-1) (the “Omnibus Opposition”). Portions of this  
19 material reflect: confidential communications between the MindGeek Defendants  
20 and its lenders (which includes Redwood); terms and conditions of confidential loan  
21 agreements; and confidential business strategies and approaches to financing  
22 negotiations.

23 3. Specifically, Redwood requests that lines 18:3-13, 18:15-19:17, 20:8-9,  
24 40:17-21, 41 n. 29, 66:4-9, 67:9-20, 75:16-18, 75:28-76:1, 78:28-79:4, 79:17-18, and  
25 80:28-81:1 of Plaintiffs’ Omnibus Opposition remain sealed, consistent with the  
26 confidential material that Redwood has previously sought to seal in its Application  
27 for Leave to File Under Seal (the “MTD Application”) in the above-captioned matter  
28

1 (Dkt. 69) and in its Application for Leave to File Under Seal filed in the *Fleites* Case  
2 (Dkt. 449, 450) (together with the MTD Application, the “Applications for Leave to  
3 File Under Seal”). Redwood also requests that pages 218-19 of the June 15, 2023  
4 Bergmair Deposition Transcript (excerpted), filed by Plaintiffs as Exhibit 4 (Dkt.  
5 96-5 at 4-5), be sealed.

6       4. The federal common law right to access public records is “not absolute.”  
7 *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). In particular, “the  
8 common-law right of inspection has bowed before the power of a court to insure that  
9 its records are not used … as sources of business information that might harm a  
10 litigant’s competitive standing.” *Id.*

11      5. The standard of review a court applies when reviewing applications to  
12 seal depends on whether the application is brought in connection with dispositive  
13 motions or non-dispositive motions. *See Pintos v. Pac. Creditors Ass’n*, 605 F.3d  
14 665, 677 79 (9th Cir. 2010). A “compelling reasons” standard applies to dispositive  
15 motions. *Id.*

16      6. Under the “compelling reasons” standard, a district court should weigh  
17 “relevant factors” to determine if there is an articulable “compelling reason” to seal  
18 documents. *Pintos*, 605 F.3d at 679. “‘Relevant factors’ include the ‘public interest  
19 in understanding the judicial process and whether disclosure of the material could  
20 result in improper use of the material for scandalous or libelous purposes or  
21 infringement upon trade secrets.’” *Id.* at 679 n.6 (citation omitted). This list is not  
22 exhaustive.

23      7. There are a variety of “compelling reasons” to seal documents. Courts  
24 have found “compelling reasons” to seal documents, where their disclosure would  
25 risk competitive injury. *See, e.g., In re Qualcomm Litig.*, No. 3:17-cv-0108-GPC-  
26 MDD, 2018 WL 6252523, at \*2 (S.D. Cal. May 9, 2018) (finding that compelling  
27 reasons existed to seal certain information subject to confidentiality agreements);  
28

1       *Arabian v. Sony Elecs., Inc.*, No. 05-CV-1741 WQH (NLS), 2007 WL 627977, at  
2 \*14 (S.D. Cal. Feb. 22, 2007) (granting an application to seal exhibits to a declaration  
3 because they contained “proprietary and/or trade secret information[]” and the  
4 information was “of such a commercially-sensitive nature that it would create a risk  
5 of competitive injury . . . if it were disclosed to the public”); *Ovonic Battery Co. v.*  
6 *Sanyo Elec. Co.*, No. 14-cv-01637-JD, 2014 WL 2758756, at \*3 (N.D. Cal. June 17,  
7 2014) (granting a request to seal a petition because it contained information that, if  
8 publicly released, “could place [the petitioner] in a diminished bargaining position in  
9 future negotiations”).

10       8. Courts have also sealed documents that reflect “confidential business  
11 strategies and other commercially sensitive information.” *See Campbell v.*  
12 *PricewaterhouseCoopers, LLP*, 642 F.3d 820, 822 n.1 (9th Cir. 2011); *see also*  
13 *ImprimisRx, LLC v. OSRX, Inc.*, No. 21-cv-01305-BAS-DDL, 2023 WL 7029210, at  
14 \*3 (S.D. Cal. Oct. 24, 2023) (commenting that future business planning and  
15 competitive strategy amount to “quintessential business information that may harm  
16 a firm’s competitive standing if disclosed to the public”) (citations omitted). This is  
17 consistent with the United States Supreme Court’s determination that courts may seal  
18 “business information that might harm a litigant’s competitive standing[.]” *Nixon*,  
19 435 U.S. at 598 (citation omitted).

20       9. The Ninth Circuit has also repeatedly stated that confidential and  
21 proprietary business information should be filed under seal. *See, e.g., IMAX Corp.*  
22 *v. Cinema Techs., Inc.*, 152 F.3d 1161, 1168 n.9 (9th Cir. 1998); *In Re Duel-Deck*  
23 *Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 694 (9th Cir. 1993) (noting it  
24 “is common now in business litigation” to seal “confidential [business] information”)  
25 (alteration added). The public’s interest in viewing a document is diminished where  
26 the document is “not relevant to the Court’s resolution of the [dispositive] motion.”

27  
28

1       *Music Grp. Macao Com. Offshore Ltd. v. Foote*, 2015 WL 3993147, at \*8 (N.D. Cal.  
2 June 30, 2015).

3           10. Compelling reasons exist to seal lines 18:3-13, 18:15-19:17, 20:8-9,  
4 40:17-21, 41 n. 29, 66:4-9, 67:9-20, 75:16-18, 75:28-76:1, 78:28-79:4, 79:17-18, and  
5 80:28-81:1 of Plaintiffs' Omnibus Opposition and pages 218-19 of the excerpted  
6 June 15, 2023 Bergmair Deposition Transcript filed by Plaintiffs at Dkt. 96-5.  
7 Specifically, these materials implicate Redwood's confidential business practices and  
8 strategies and other commercially sensitive information, including confidential  
9 financing terms.

10          11. The relief requested in Plaintiffs' Application is necessary to protect: (i)  
11 Redwood's confidential business strategies and negotiations and (ii) proprietary  
12 business information regarding confidential loan agreements. *See Lightning Box*  
13 *Games Pty, Ltd. v. Plaor, Inc.*, 2017 WL 7310782, at \*4 (N.D. Cal. Dec. 29, 2017);  
14 *Adema Techs., Inc. v. Wacker Chemie AG*, 2013 WL 6622904, at \*2 (N.D. Cal. Dec.  
15 16, 2013); *Ovonic Battery Co.*, 2014 WL 2758756, at \*3. *See also Pluspass, Inc. v.*  
16 *Verra Mobility Corp.*, No. 2:20-cv-10078-FWS-KK, 2023 WL 6370236, at \*4 (C.D.  
17 Cal. Aug. 29, 2023) (finding compelling reasons to seal declaration containing "trade  
18 secrets, including information regarding contractual terms, confidential negotiations,  
19 and business strategies"). Further, the excerpted June 15, 2023 Bergmair Deposition  
20 Transcript is not necessary to the resolution of the motion to dismiss. *See Music Grp.*  
21 *Macao Com. Offshore Ltd.*, 2015 WL 3993147, at \*8 (N.D. Cal. June 30, 2015).

22          12. The sealing request is narrowly tailored to lines 18:3-13, 18:15-19:17,  
23 20:8-9, 40:17-21, 41 n. 29, 66:4-9, 67:9-20, 75:16-18, 75:28-76:1, 78:28-79:4, 79:17-  
24 18, and 80:28-81:1 of Plaintiffs' Omnibus Opposition and pages 218-19 of the June  
25 15, 2023 Bergmair Deposition Transcript (Dkt. 96-5 at 4-5). A less restrictive  
26 alternative is not sufficient because the entirety of the information sought to be sealed  
27 discloses the confidential information described above.

28

1 I declare under penalty of perjury under the laws of the State of California that  
2 the foregoing is true and correct.

3 Executed in Chicago, Illinois on December 18, 2024.  
4

5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

\_\_\_\_\_  
/s/ *Adam M. Reich*  
\_\_\_\_\_  
Adam M. Reich